

ESTTA Tracking number: **ESTTA557459**

Filing date: **09/03/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Alliant Techsystems Inc.
Granted to Date of previous extension	09/01/2013
Address	7480 Flying Cloud Drive Eden Prairie, MN 55344 UNITED STATES

Attorney information	Stephen R. Baird Winthrop & Weinstine, P.A. 3500 Capella Tower 225 South Sixth Street Minneapolis, MN 55402 UNITED STATES trademark@winthrop.com, sbaird@winthrop.com, bwalz@winthrop.com, emcdermott@winthrop.com Phone:612-604-6400
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Applicant Information

Application No	79099280	Publication date	03/05/2013
Opposition Filing Date	09/03/2013	Opposition Period Ends	09/01/2013
International Registration No.	1082349	International Registration Date	03/18/2011
Applicant	FABBRICA D'ARMI PIETRO BERETTA S.p.A. Via Pietro Beretta, 18 GARDONE VAL TROMPIA (BRESCIA), I25063 ITALY		

Goods/Services Affected by Opposition

Class 013. Opposed goods and services in the class: ammunition and projectiles

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Other	

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3909037	Application Date	10/21/2009
Registration Date	01/18/2011	Foreign Priority Date	NONE

Word Mark	PRAIRIE STORM
Design Mark	
Description of Mark	NONE
Goods/Services	Class 013. First use: First Use: 2009/11/00 First Use In Commerce: 2010/05/00 Ammunition

U.S. Registration No.	3982236	Application Date	11/30/2009
Registration Date	06/21/2011	Foreign Priority Date	NONE
Word Mark	FEDERAL PREMIUM AMMUNITION PRAIRIE STORM		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 013. First use: First Use: 2009/11/00 First Use In Commerce: 2010/08/00 Ammunition		

U.S. Registration No.	3990779	Application Date	11/30/2009
Registration Date	07/05/2011	Foreign Priority Date	NONE
Word Mark	FEDERAL PREMIUM AMMUNITION PRAIRIE STORM		
Design Mark			
Description of Mark	The mark consists of a square with black and red clouds at the bottom, then silver grass, a gold shockwave, and red, orange, yellow, brown and black storm clouds representing sunrise or sunset at the top, a silver circle design composed of three curved bands and the outline of a bullet, the wording "FEDERAL PREMIUM" in the color white with black shadowing, the wording "AMMUNITION" in silver with black shadowing, the wording "PRAIRIE STORM" in silver and white with black shadowing and a pheasant with white, brown, black, orange, purple, blue and yellow feathers, white feet, a black, purple, blue, white, and red head, a black and white eye and a white beak.		
Goods/Services	Class 013. First use: First Use: 2009/11/00 First Use In Commerce: 2009/11/00 Ammunition		

Attachments	20130903 - Notice of Opposition - Beretta - STORM.pdf(491340 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Bradley J. Walz/
Name	Bradley J. Walz
Date	09/03/2013

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No.: 79/099,280
Filed: March 18, 2011
For the mark: STORM & Design
Published in the Trademark Official Gazette on March 5, 2013

Alliant Techsystems Inc.,

Opposer,

v.

Opposition No. _____

Fabbrica D'Armi Pietro Beretta S.p.A.,

Applicant.

NOTICE OF OPPOSITION

Alliant Techsystems Inc. ("Opposer"), believes that it will be damaged by the registration of the mark shown in Application Serial No. 79/099,280 (the "Application") in International Class 13 for "ammunition and projectiles," and hereby opposes the same.

The grounds for opposition are as follows:

1. Fabbrica D'Armi Pietro Beretta S.p.A. ("Applicant") seeks to register STORM & Design ("Applicant's Mark") as a trademark for, among other goods, "ammunition and projectiles" in International Class 13 ("Applicant's Goods").

2. Applicant's Mark was published for opposition in the Trademark Official Gazette on March 5, 2013. Opposer filed Requests for Extension of Time to oppose the registration of Applicant's Mark in connection with Applicant's Goods on April 4, 2013, May 1, 2013, and July 3, 2013. The Trademark Trial and Appeal Board (the "Board")

granted Opposer's extension requests, extending the time to oppose the registration of Applicant's Mark up to and including September 3, 2013.¹

GROUND I
(Likelihood of Confusion)

3. Opposer restates and incorporates by reference the allegations in Paragraphs 1-2.

4. Upon information and belief, Applicant has not used Applicant's Mark in commerce in connection with Applicant's Goods.

5. Upon information and belief, Applicant cannot claim a date of first use in commerce prior to February 16, 2011.

6. Opposer is the record owner of a federal registration for the mark PRAIRIE STORM in Class 13 for "ammunition" ("Opposer's Goods"), Registration No. 3,909,037. Attached as Exhibit A is a true and correct copy of the current status and title for the PRAIRIE STORM registration from the Trademark Electronic Search System ("TESS").

7. The constructive notice date for Opposer's PRAIRIE STORM mark is January 18, 2011.

8. The constructive use date for Opposer's PRAIRIE STORM mark is October 21, 2009.

9. Opposer is the record owner a federal registration for the mark FEDERAL PREMIUM AMMUNITION PRAIRIE STORM in Class 13 for "ammunition" Registration No. 3,982,236. Attached as Exhibit B is a true and correct copy of the

¹ The deadline to oppose was September 1, 2013. However, September 1, 2013 was a Sunday and September 2, 2013 was Labor Day; thus, Opposer's deadline is September 3, 2013.

current status and title for the FEDERAL PREMIUM AMMUNITION PRAIRIE STORM registration from TESS.

10. The constructive use date for Opposer's FEDERAL PREMIUM AMMUNITION mark is November 30, 2009.

11. Opposer is the record owner a federal registration for the mark FEDERAL PREMIUM AMMUNITION PRAIRIE STORM & Design in Class 13 for "ammunition," Registration No. 3,990,779. Attached as Exhibit C is a true and correct copy of the current status and title for the FEDERAL PREMIUM AMMUNITION PRAIRIE STORM & Design registration from TESS. Opposer's registrations for its PRAIRIE STORM, FEDERAL AMMUNITION PRAIRIE STORM, and FEDERAL AMMUNITION PRAIRIE STORM & Design are collectively referred to as "Opposer's Registrations."

12. The constructive use date for Opposer's FEDERAL PREMIUM AMMUNITION PRAIRIE STORM & Design mark is November 30, 2009.

13. Upon information and belief, Opposer has priority to use its PRAIRIE STORM, FEDERAL AMMUNITION PRAIRIE STORM, and FEDERAL AMMUNITION PRAIRIE STORM & Design marks (collectively "Opposer's Marks").

14. Applicant's Mark and Opposer's Marks contain the term STORM.

15. Applicant's Application and Opposer's Registrations identify "ammunition" in the goods description.

16. The identification of goods description in Opposer's Registrations are unrestricted as to a channel of trade.

17. The description of Applicant's Goods in the Application is unrestricted as to a channel of trade.

18. Opposer's Goods and Applicant's Goods are deemed to travel in the same channels of trade.

19. The identification of goods description in Opposer's Registrations are unrestricted as to a class of consumer.

20. The description of Applicant's Goods in the Application is unrestricted as to a class of consumer.

21. Opposer's Goods and Applicant's Goods are deemed to appeal to the same classes of consumers.

22. Upon information and belief, Opposer's Marks are conceptually strong.

23. Opposer has continuously used Opposer's Marks in commerce since at least as early as November 2009.

24. Opposer has expended considerable time, effort, and expense in promoting, advertising, and popularizing the ammunition offered under Opposer's Marks.

25. Upon information and belief, Opposer's Marks are commercially strong.

26. Upon information and belief, the design component in Applicant's Mark is insufficient to distinguish Applicant's Mark from Opposer's Marks.

27. Upon information and belief, the consumers have come to know, rely upon, and recognize Opposer's Marks as strong indicators of the source of Opposer's Goods, and consumers are likely to mistakenly believe that Applicant's Goods and Opposer's Goods emanate from the same source.

28. Upon information and belief, Applicant's Mark so resembles Opposer's Marks that purchasers and prospective purchasers are likely to mistakenly believe that Applicant's Goods sold under Applicant's Mark are sponsored, endorsed, or approved by Opposer, or are in some other way affiliated, connected, or associated with Opposer, all to the detriment of Opposer.

29. Upon information and belief, Applicant's Mark is likely to cause consumer confusion. Therefore, registration of Applicant's Mark should be refused under 15 U.S.C. §1052(d).

GROUND II
(Void Ab Initio)

30. Opposer restates and incorporates by reference the allegations in Paragraphs 1-29.

31. Upon information and belief, Applicant was the record owner of a registration for the mark BERETTA in connection with "ammunition, namely, shotgun shells," Registration No. 1,622,387.

32. Registration No. 1,622,387 was cancelled more than a decade ago for failing to file the required Section 8 Declaration of Continuous Use.

33. Upon information and belief, Applicant owns no use-based U.S. trademark registrations for any mark in connection with ammunition or projectiles.

34. Upon information and belief, Applicant does not offer for sale or sell ammunition.

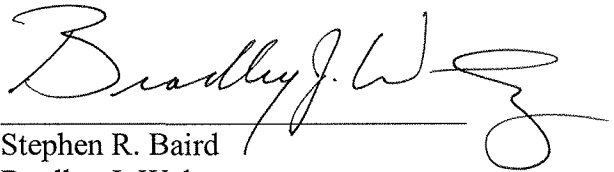
35. Upon information and belief, Applicant did not have a bona fide intent to use in commerce Applicant's Claimed Mark in connection with ammunition or

projectiles when it filed the Application and when it sought registration of Applicant's Claimed Mark in the United States. Therefore, Applicant's Application is *void ab initio*.

WHEREFORE, Opposer respectfully requests that the Board sustain its opposition and:

1. Refuse registration of Applicant's Mark for Applicant's Goods in Application Serial No. 79/099,280; and
2. Award Opposer any further relief the Board deems equitable.

WINTHROP & WEINSTINE, P.A.

A handwritten signature in cursive script, appearing to read "Bradley J. Walz", written over a horizontal line.

Stephen R. Baird
Bradley J. Walz

Dated: September 3, 2013

3500 Capella Tower
225 South Sixth Street
Minneapolis, MN 55402
(612) 604-6400 (Telephone)
(612) 604-6800 (Facsimile)

Attorneys for Alliant Techsystems Inc.

8269698v1

Exhibit A



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PRAIRIE STORM

Word Mark	PRAIRIE STORM
Goods and Services	IC 013. US 002 009. G & S: Ammunition. FIRST USE: 20091100. FIRST USE IN COMMERCE: 20100500
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	77853511
Filing Date	October 21, 2009
Current Basis	1A
Original Filing Basis	1B
Published for Opposition	March 23, 2010
Registration Number	3909037
Registration Date	January 18, 2011
Owner	(REGISTRANT) Alliant Techsystems Inc. CORPORATION DELAWARE 7480 Flying Cloud Drive Minneapolis MINNESOTA 55344
Attorney of Record	Stephen R. Baird
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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Exhibit B



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[TSDR](#) [ASSIGN Status](#) [TTAB Status](#) (Use the "Back" button of the Internet Browser to return to TESS)FEDERAL PREMIUM AMMUNITION
PRAIRIE STORM

Word Mark	FEDERAL PREMIUM AMMUNITION PRAIRIE STORM
Goods and Services	IC 013. US 002 009. G & S: Ammunition. FIRST USE: 20091100. FIRST USE IN COMMERCE: 20100800
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	77882603
Filing Date	November 30, 2009
Current Basis	1A
Original Filing Basis	1B
Published for Opposition	September 14, 2010
Registration Number	3982236
Registration Date	June 21, 2011
Owner	(REGISTRANT) Alliant Techsystems Inc. CORPORATION DELAWARE 7480 Flying Cloud Drive Minneapolis MINNESOTA 55344
Attorney of Record	Stephen R. Baird
Prior Registrations	3513153
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "AMMUNITION" APART FROM THE MARK AS SHOWN
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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Exhibit C


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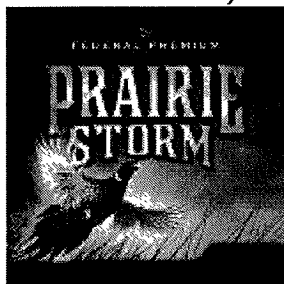
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Word Mark	FEDERAL PREMIUM AMMUNITION PRAIRIE STORM
Goods and Services	IC 013. US 002 009. G & S: Ammunition. FIRST USE: 20091100. FIRST USE IN COMMERCE: 20091100
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	03.15.12 - Peacocks; Pheasants; Quail 03.15.19 - Birds or bats in flight or with outspread wings 05.13.03 - Grasses 06.09.25 - Cemeteries 26.11.21 - Rectangles that are completely or partially shaded 26.11.28 - Miscellaneous designs with overall rectangular shape; Rectangular shapes (miscellaneous overall shape)
Serial Number	77882599
Filing Date	November 30, 2009
Current Basis	1A
Original Filing Basis	1B
Published for Opposition	September 28, 2010
Registration Number	3990779
Registration Date	July 5, 2011
Owner	(REGISTRANT) Alliant Techsystems Inc. CORPORATION DELAWARE 7480 Flying Cloud Drive Minneapolis MINNESOTA 55344
Attorney of Record	Stephen R. Baird

Prior Registrations 3499586;3513153

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "AMMUNITION" APART FROM THE MARK AS SHOWN

Description of Mark The color(s) black, red, gold, white, silver, orange, yellow, and brown, blue and purple is/are claimed as a feature of the mark. The mark consists of a square with black and red clouds at the bottom, then silver grass, a gold shockwave, and red, orange, yellow, brown and black storm clouds representing sunrise or sunset at the top, a silver circle design composed of three curved bands and the outline of a bullet, the wording "FEDERAL PREMIUM" in the color white with black shadowing, the wording "AMMUNITION" in silver with black shadowing, the wording "PRAIRIE STORM" in silver and white with black shadowing and a pheasant with white, brown, black, orange, purple, blue and yellow feathers, white feet, a black, purple, blue, white, and red head, a black and white eye and a white beak.

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Alliant Techsystems Inc,)	
)	
Opposer,)	
)	
v.)	
)	Opposition No. _____
Fabbrica D'Armi Pietro Beretta S.p.A.,)	
)	
Applicants.)	
)	_____

CERTIFICATE OF SERVICE BY MAIL

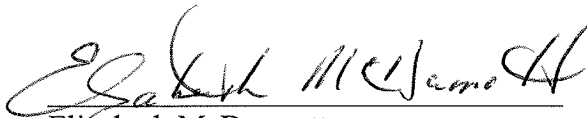
STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

Elizabeth McDermott, of the City of Minneapolis, County of Hennepin, in the State of Minnesota, says that on the 3rd day of September, 2013, she mailed by First Class mail, a true and correct copy of Opposer's:

1. Notice of Opposition

in the above-captioned action to the following last known address of record for Respondent, to-wit:

Rebeccah L. Gan
YOUNG & THOMPSON
209 Madison Street, Suite 500
Alexandra, VA 22314


Elizabeth McDermott